HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE.

AND

HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

Writ Petition No.7341 of 1999

%29-03-2005

Between:

#S.Sesham Raju .. Petitioner

and

$The State of Andhra Pradesh rep.

by its Principal Secretary to Govt. (H.E.)

Education Department, Secretariat,

Hyderabad, and others .. Respondents

!Counsel for the Petitioner : Sri A.Ramalingeswara Rao

^Counsel for Respondents 1 and 2: Govt. Pleader for Higher Education

Counsel for Respondent No.3 : Sri H.Srinivasa Rao

Counsel for Respondent No.4 : No appearance

<GIST

>HEAD NOTE:

? (1991) 3 SCC 87

AIR 1993 SC 2178

AIR 2003 SC 355

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERBAD

(Special Original Jurisdiction)

TUESDAY THE 29th DAY OF MARCH

TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE.

AND

HON'BLE SRI JUSTICE B. SESHASAYANA REDDY

Writ Petition No.7341 of 1999

Between:

S.Sesham Raju

S/o Mattam Raju, Age 62 years,

Retd. Govt. Servant,

R/o Vittalwadi,

Hyderbad – 500 029. .. Petitioner

And

1. The State of Andhra Pradesh rep.

rep.. by its Principal Secretary to Govt. (H.E.)

Education Department, Secretariat,

Hyderabad.

2. A.P. State Council of Higher Education,

Saifabad, Hyderabad, rep. by its Chairman.

3. Indian Institute of Information Technology,

Gachibowli, Old Bombay road, Serilingampalli,

Mandal, Ranga Reddy district, rep. by its Director.

4. Project Manager (IIIT-Hyderabad)

Educational Consultants India Limited,

Ed.CIL House, 18-A, Sector 16-A,

NOIDA (U.P.) 201 301.

Counsel for the Petitioner : Sri A.Ramalingeswara Rao

Counsel for the Respondents : Govt. Pleader for Higher Edn.

1 and 2

Counsel for Respondent No.3 : Sri H. Srinivasa Rao.

Counsel for respondent No.4 : No appearance.

JUDGMENT: (Per **Hon'ble the Chief Justice**)

This writ petition is filed as PIL by S. Sesham Raju, President of A.P.Bhatraju Sangham, seeking direction against the third Respondent to comply with the provisions of A.P. Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983, hereinafter referred to as "Prohibition of Capitation Fee

Act, 1983" and the rules made thereunder and to provide reservation to weaker sections of the Society, namely women, Backward Classes, Scheduled Castes and Scheduled Tribes.

The petitioner has alleged that on going through an advertisement in Eenadu Telugu Newspaper on 09th March, 1993, inviting applications for admission to Under-Graduate Programme in Information Technology for the academic year 1999-2000, the petitioner found that the application format published in the advertisement does not indicate the communal data required except the sex of the applicant. It also did not indicate whether any seats are earmarked for women and other weaker sections of the society. Advertisement disclosed that the third respondent-Institute had been set up by global leaders in Information Technology Industry in association with Government of Andhra Pradesh and that the Institute will award its own Graduate Diplomas in Information Technology and the contents of Under-Graduate Programme would be at par with B.E. and B.Tech. Programmes. The petitioner further alleged that it is not known whether the Institute had obtained any approval from All India Council for Technical Education or from the Andhra Pradesh State Council of Higher Education. The petitioner stated that he is not aware whether the Institute is a private unaided institute or Government aided institution. The petitioner reserved his right to file additional affidavit on getting information. After referring to certain provisions of the Andhra Pradesh Education Act, 1982 (Act No.1 of 1982) (for short the "Education Act, 1982"), the provisions of Prohibition of Capitation Fee Act, 1983 and the provisions Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of Institutions of Higher Education) Rules, 1987, hereinafter referred to as "the Rules", and Andhra Pradesh Unaided Private Engineering Colleges (Establishment, Management and Admission) Rules, 1992, the petitioner alleged that Government had issued G.O.Ms.No.184 Education (EC-2) Department dated 20th August, 1993 framing Rules for admission into professional educational institutions called "Andhra Pradesh Professional Educational Institutions (Regulation of Admissions into Under-Graduate Professional Courses through Common Entrance Test) Rules, 1993. The Rules provide for method of admission, eligibility criteria for admission, conduct of Common Entrance Test and rules of reservation. Rules of reservation provide for reserving seats for Scheduled Castes, Scheduled Tribes and Backward Communities and also for women, apart from other categories of candidates like physically handicapped, N.C.C., Games and

Sports. The petitioner has also referred to another Act, namely, Andhra Pradesh State Council of Higher Education Act, 1988, saying that it provides for constituting State Council to advice the Government in matters relating to higher education in the State and to oversee its development with perspective planning and for matters connected therewith and incidental thereto.

After making references to the aforementioned enactments and the Rules, the petitioner alleged that the provisions made in the said enactments and Rules have been given a go-by, while setting up the Indian Institute of Information Technology (hereinafter referred to as 'Institute') (Respondent No.3), as a result, no reservation is provided to women, Backward Class, Scheduled Caste and Scheduled Tribe students, even though the programme of the Institute would be at par with B.E./B.Tech. Degree programmes conducted by the other colleges. The petitioner thus sought direction against Indian Institute of Information Hyderabad – third respondent to comply with provisions of Andhra Pradesh Educational Institutions (Regulation of Admission and Prohibition of Capitation Fee) Act, 1983 and the Rules made thereunder and to provide reservation for women, and students belonging to Backward Classes, Scheduled Castes and Scheduled Tribes in the available seats in the Institute while making admissions.

Rule nisi was issued. Affidavits in reply have been filed by Seetharama Raju, Deputy Secretary to Government, Department of Higher

Education, Andhra Pradesh, and by Dr. Narendra Ahuja, Acting Director of the Institute. The Respondents stand in reply affidavits is almost similar. Affidavits in reply were filed in the year 1999. The petitioner has thereafter not chosen to file any further affidavit in support of his petition.

Respondents 1 and 2 in their counter-affidavit stated that the writ petition filed seeking relief against the third respondent to comply with the provisions of Prohibition of Capitation Fee Act, 1983 is not maintainable inasmuch as the third respondent is not 'State' within the meaning of Article 12 of the Constitution of India. Affidavit of the State Government further states that neither the provisions of Prohibition of Capitation Fee Act, 1983 nor the Rules made thereunder are applicable to the Institute. It is stated that the Institute is a non-profit society registered under Andhra Pradesh (Telangana Area) Public Societies Registration

Act, 1350 Fasli, formed by the founder-members comprising of M/s Satyam Computer Services Limited, Hyderabad; Metamor Global Solutions Limited, Tata-IBM Limited; Oracle Software India Limited and National Association of Software and Service Companies (NASSCOM), New Delhi, all of which are companies incorporated under the Indian Companies Act, 1956. Institute was conceived and established on non-profit basis by leading companies in global Information Technology industry along with NASSCOM. The Institute is designed to play a crucial role in India's emergence as a software super-power and in providing a solid foundation to the emerging position of the State in the area of Information Technology. It is further stated that the spectacular growth of software industry all over the world has generated a huge demand for highly skilled Information Technology manpower resulting in projection of long-term global demand and supply gap. Unlike the traditional industries, human resources constitute the single most important resource in Information Technology industry and the finest companies in Information Technology funnel their growth into areas that have the richest availability of skilled manpower.

Making further averments as regards the growing appreciation of potential that exists in India especially in the State of Andhra Pradesh and the role of Information Technology professionals in the I.T. Industry and the reason that it is difficult for the Government alone to either establish or directly support such institutions, it is stated that Government has not tried to set up or directly support such institutions, but preferred to encourage the companies by providing facilities. Information Technology Industry indicated its willingness to set up a Centre of Excellence consisting of Corporate School, which provides facilities, imparting skills in the areas of core competence. The Government had also developed a vision for the State that recognizes the strategic importance of Information Technology and the vision envisages creation of such Centres of Excellence to sustain and complement the strategies to create high quality manpower and physical infrastructure in all aspects. Consequently, Government of Andhra Pradesh facilitated establishment of an Institute by providing land and some existing building and infrastructure on lease through Andhra Pradesh Industrial Infrastructure Corporation. The Institute had also appointed its own Director and though initially the Government had lent services of a Government Officer to handle the preparatory steps and external support was extended by the Government, the Institute has its own autonomous governance structure without there being any governing role by the Government. Affidavits of

respondents 1 and 2 further state that the third respondent being an autonomous society, adopted its own method of inviting applications and making admissions to various programmes launched by it. The Institute is not awarding any degree to successful candidates. It is also stated that number of other private organizations like NIIT, APTECH and CMC are also offering various Diploma Programmes in Information Technology, for which such organizations themselves decide the content and Syllabi of the programmes, modalities of admission, fees etc. Respondent No.3 is neither a Government-aided institute, nor is a recipient of any Government grant. The Institute is a unique, industry-driven, autonomous, non-profit 'Centre of Excellence' in Information Technology, and it is neither the 'State' nor an instrumentality of the State nor an authority discharging any Governmental functions. The Institute is not imparting any education conforming to University standards and though it bears the similar name as 'Indian Institute of Information Technology', it is fundamentally different from Indian Institute of Information Technology, Allahabad.

Similar is the stand taken by the third respondent that it is a registered society and the Governing Council members comprise largely of representatives of participating companies and academicians of international repute. Secretary, Higher Education and Secretary, Information Technology, Government of Andhra Pradesh, are also included in the Governing Council but do not enjoy any extraordinary veto power. Government had provided the land and some structures on lease, and the processes of appointment and removal of employees as well as the service conditions of employees are not under the control of the Government. Institute is not discharging any Governmental function and is neither receiving any aid nor is funded by the Government and also there is no Governmental control on any of its sphere of activities.

As noticed above, there is no further affidavit filed by the petitioner, who has miserably failed to show that respondent No.3 is a 'State' or its authority or any instrumentality of the State. It is a society registered under the A.P. (T.A.) Public Societies Registration Act. The petitioner though had referred to various provisions of the Acts and the Rules made thereunder relating to admissions, but was unable to convince us that it is bound to comply with the Rules of reservation or parameters

set up by the State Government for other educational institutions imparting education. Whether or not the Institute is imparting education, as is envisaged under various provisions and the enactments relied upon by the petitioner, we have to rely only upon what is stated by the respondents in their counter-affidavits inasmuch as the petitioner in the writ petition also is not definite about the type of education and knowledge being imparted by Respondent No.3. The petitioner has not been able to show that the Institute is imparting any education, which is recognized by the University. Being a private non-profit and non-Governmental society registered under the A.P. (T.A.) Public Societies Registration Act, the Institute, after imparting some training in information technology, issues its own certificates to the successful candidates. Such activities of the Society would not come within the ambit of imparting education requiring reservation to be made.

Learned counsel for the petitioner has drawn our attention to the provisions of the Education Act, 1982 in support of his submission that Respondent No.3-Institute is imparting education as defined under the said Act, therefore, it is an “educational institution” and is thus required to follow the Rules and Regulations framed by the State Government under the Act for providing reservation to various categories of persons. Under sub-section (16) of Section 2 of the Education Act, 1982, the word “education” has been defined to mean “general education, medical education, technical education, physical education, teacher education, special education, oriental education, adult education including non-formal, and any other branch of education which the government may, by notification, specify. It was not demonstrated before us by learned counsel for the petitioner that the knowledge being imparted by Respondent No.3-institute would come within the meaning of the word “education” as defined under sub-section (16) of Section 2 of the Education Act, 1982 nor it was demonstrated that the branch of knowledge being imparted by Respondent No.3 is such which the Government has by notification specified to fall within the ambit of the definition of the term “education”.

“Educational institution” has been defined under sub-section (18) of Section 2 of the Education Act, to mean any recognized School or College or other institution by whatever names the same may be called. Thus, the pre-requisite for any institution to be branded as “educational institution” is that it should be a recognized School, College or Institution. Section 20 of the Education Act, 1982 deals with the manner in which permission for establishment of any educational institution may be

accorded by the State Government and sub-section (4) thereof says that no educational institution shall be established except in accordance with the provisions of the Act and any person contravening the provisions of the said Act would be liable to be punished. Section 21 of the Education Act deals with grant or withdrawal of recognition of institutions imparting education. Respondent No.3 is not a recognized Institute and as such cannot be termed as an “educational institution” as defined under the Education Act, 1982. Learned counsel for the petitioner submitted that since Respondent No.3-institute is granting its Diplomas or Degrees after completion of the course of study, it should be deemed that it is imparting knowledge and would require to get recognition. We have already dealt with this submission that the type of knowledge being imparted by Respondent No.3-institute cannot be termed as ‘education’ as defined in the Education Act, though Respondent No.3 is named as an Institution of Information Technology. Such an institution though named as such will not fall in the definition of “educational institution” under Education Act, 1982, which requires that education imparted be of that character which is imparted in Schools recognized by the State Government or by Colleges including Medical Colleges, Engineering Colleges, which are recognized by the Universities for which ultimately Degrees and Diplomas are awarded by the Universities. Several types of education, knowledge or training might be imparted by any private institution or an individual e.g. imparting knowledge, education or training in Cookery, Sewing, Medical Health, Homeopathy, Astrology etc. But every type of such knowledge, education or training will not partake the character of imparting “education” as is envisaged under the Education Act. We may refer to a decision of the Supreme Court in **STATE OF TAMIL ANDU AND OTEHRS v. ST. JOSEPH TEACHERS TRAINING INSTITUTION AND OTHER**. The Supreme Court dealt with the cases of some societies or individuals who had set up educational institutions for running courses for teachers training in the State of Tamil Nadu. Such societies/individuals had sought recognition from the Director and Joint Director of Education of the State of Tamil Nadu for running teachers training courses. Recognition was not accorded since institutions did not fulfill requisite conditions for setting up of teachers training institutions. Despite that, the institutions proceeded to admit students in the institutions. The Institutions filed writ petitions before the High Court seeking direction to the Government to recognize their institutions. Relief was granted on humanitarian grounds by issuing directions making the students eligible to appear in Public Examination conducted by the State

Government. The Supreme Court set aside the said directions issued to the Government and to the Education Department which were issued on humanitarian grounds saying that though there may be fundamental right of the minorities to establish educational institutions of their own choice but such right to establish educational institutions is always subject to State's right to prescribe regulatory provisions. Unless educational institution is recognized, such institution is not entitled to ask the Government to grant permission to its students to appear for Public Examination. Under Article 30 of the Constitution, minorities based on religion or language have fundamental right to establish educational institutions of their own choice, but the State has the right to prescribe regulatory provisions for ensuring educational excellence. A minority institution, which does not seek recognition, is free to function according to its own choice. Only in case where an institution seeks recognition by the State that it has to comply with the prescribed conditions and in that event minority institution has to follow the prescribed syllabus for examination, courses of study and other allied matters.

In the instant case, Respondent No.3-Institute, admittedly, is not a recognized institution. Respondent No.3 has also not applied for affiliation with any University and has not sought recognition of its Certificates i.e. so called Diplomas or Degrees by the State or by any of the Universities. Therefore, it cannot be said that Respondent No.3 is bound to comply with the provisions of the Education Act, 1982 or the provisions of any other enactment referred to above. Stand of the State is that it is not such an institution, which requires any recognition in accordance with the provisions of the Education Act.

Reliance was placed by learned Counsel for the petitioner on some of the observations made in the decision of the Supreme Court in **UNNI KRISHNAN, J. AND OTHERS v. STATE OF ANDHRA PRADESH AND OTEHRS** urging that the nature of duties imposed on the body have to be considered. If the emphasis is on the nature of duties, then on the same principle, it has to be held that any "educational institution" discharging public duties, irrespective of the educational institutions receiving aid, should be held discharging public duties. Absence of aid does not distract the very nature of duties; therefore, the respondent-Institute, which is discharging public duty, is bound to provide for reservation. This submission on behalf of the petitioner is wholly misconceived inasmuch as the functions being discharged by respondent No.3 do not embrace in it or partake the character of any

public function or public duty. It is not the type of education, which the State is bound to provide, as was the subject-matter in **UNNI KRISHNAN** case supra. Information Technology is a separate sector, which has come into being recently. It might embrace within it various other sectors of our social fabric, but imparting such training or knowledge by a private Institute would not come within the ambit as is envisaged under the provisions of the enactments relied upon by the petitioner, or any law governing the Universities.

The Judgment of the Supreme Court in **T.M.A. PAI FOUNDATIION v. STATE OF KARNATAKA** deals with various facets of establishment and administration of educational institutions in general and minority institutions in particular. Educational institutions are of different types and are broadly classified into Government, private educational institutions and minority educational institutions. There is further classification on the basis of receipt of aid into aided and unaided institutions. Further classification is also made which envisages on the basis of level of education, which is imparted, namely, 'School', 'Under Graduate', 'College' and Professional Institutions. The Judgment differently deals with various types of educational institutions and has overruled most of the observations made in **Unni Krishnan's** case by answering various questions. Question No.11 formulated was, what is the meaning of the expression "Education" and "Educational Institutions" in various provisions of the Constitution. Answer given was that the expression "education" in the Articles of the constitution means and includes education at all levels, from the Primary school level up to the Post Graduate level. It includes professional education. The expression "educational institutions" means institutions that impart education, where 'education' is as understood hereinabove. Therefore, it is that type of education, which was dealt with by the Supreme Court, which is imparted from primary school level up to post-graduate level including professional education. It is not demonstrated before us by learned counsel for the petitioner that education being imparted by Respondent No.3-institute is of that nature. Under Clause (c) of Section 2 of the Prohibition of Capitation Fee Act, 1983, "education institution" has been defined to mean a College, a School imparting education upto and inclusive of Tenth Class or other institutions by whatever name called, whether managed by Government, private body, local authority or University and carrying on the activity of imparting education therein, whether technical or otherwise, and

includes a Polytechnic, Industrial Training Institute and a Teachers Training Institute, but does not include a tutorial institution. As per the stand taken by Respondent No.3-institute, it is not imparting education of the nature as defined in expression “educational institutions” under clause (c) of Section 2 of the Prohibition of Capitation Fee Act, 1983. Once an institution is not covered by the definition of “educational institution” we are unable to accept the submission of the learned counsel for the petitioner that Respondent No.3-Institute is bound to comply with the provisions of various legislations relied upon by the learned counsel for the petitioner.

For the aforementioned reasons, we hold that neither Respondent No.3 is ‘State’ or ‘authority’, nor it is an institution governed by the provisions of the Education Act, 1982 or the provisions of the Prohibition of Capitation Fee Act, 1983. The writ petition is neither competent, nor maintainable against it nor Respondent No.3-Institute is bound by the provisions of various enactments, as relied upon by the petitioner.

Writ Petition being devoid of any merit is dismissed. No order as to costs.

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DEVINDER GUPTA, C.J.

_____

B. SESHASAYANA REDDY, J.

29-03-2005

LR Copy to be marked: Yes

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To

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Education Department, Secretariat,

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2. The Chairman,

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3. The Director , Indian Institute of Information Technology,

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